



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

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**MAY 30 2017**

RE: MUR 7132  
Michael David Pitts

Dear Mr. Crifasi:

On September 8, 2016, the Federal Election Commission ("Commission") notified your client, Michael David Pitts, of a complaint alleging that he violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and provided him with a copy of the complaint.

After reviewing the allegations contained in the complaint, and the response you submitted on behalf of Mr. Pitts, the Commission on May 10, 2017 found that there is reason to believe that Mr. Pitts knowingly and willfully violated 52 U.S.C. § 30102(b)(3), a provision of the Act, and 11 C.F.R. § 102.15. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

Please note that Mr. Pitts has a legal obligation to preserve all documents, records and materials relating to this matter until such time as he is notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement with Mr. Pitts in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to Mr. Pitts as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that Mr. Pitts violated the law. Enclosed is a conciliation agreement for your consideration,

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If Mr. Pitts is interested in engaging in pre-probable cause conciliation, please contact Delbert K. Rigsby, the attorney assigned to this matter, at (202) 694-1650 or drigsby@fec.gov, within seven days of receipt of this letter. During conciliation, Mr. Pitts may submit any factual or legal materials that he believes is relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. See 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if Mr. Pitts is not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at [http://www.fec.gov/em/respondent\\_guide.pdf](http://www.fec.gov/em/respondent_guide.pdf).

In the meantime, this matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 52 U.S.C. § 30109(a)(12)(A) unless Mr. Pitts notifies the Commission in writing that he wishes the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.<sup>1</sup>

We look forward to your response.

On behalf of the Commission,



Steven T. Walther  
Chairman

Enclosure  
Factual and Legal Analysis

<sup>1</sup> The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

Respondent: Michael David Pitts

MUR 7132

**I. INTRODUCTION**

This matter arose from a Complaint filed by Amedisys, Inc. ("Amedisys") and Amedisys, Inc. PAC ("Amed PAC") alleging that Michael David Pitts ("Pitts"), a former officer of Amedisys who also formerly performed accounting and compliance duties at Amed PAC, embezzled \$79,640 from Amed PAC in November 2013 by forging a check from Amed PAC's bank account and making it payable to Evergreen Incentives, LLC ("Evergreen"), which Pitts controlled.

Pitts pled guilty to wire fraud in connection with stealing nearly \$8 million from Amedisys between 2006 and 2014, and in October 2016, he was sentenced to four years in prison and ordered to pay full restitution.<sup>1</sup> While the activity described in the criminal charge did not include the funds that Pitts took from Amed PAC, the restitution order includes a requirement that Pitts repay \$79,640 to Amed PAC, which equals the amount Pitts stole from Amed PAC.<sup>2</sup>

The Commission found that there is reason to believe that Michael David Pitts knowingly and willfully violated 52 U.S.C. § 30102(b)(3) and 11 C.F.R. § 102.15 by commingling Amed PAC funds with his personal funds.

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<sup>1</sup> Pitts' Resp. and Supp. Resp. and attachments.

<sup>2</sup> See Pitts' Supp. Resp. and attached final court judgement at 5.

## II. FACTUAL AND LEGAL ANALYSIS

### A. Factual Background

Amedisys is a home health and hospice care company operating in more than 30 states.<sup>3</sup> Amed PAC is the separate segregated fund of Amedisys. Pitts is the former Vice President for Tax of Amedisys.<sup>4</sup> While employed with Amedisys, the company and the PAC's treasurer assigned to Pitts the task of preparing and filing the PAC's campaign finance reports,<sup>5</sup> which available information indicates he did from 2007 until 2014 when he left Amedisys. The available information also reveals that during this period, only Pitts had direct access to Amed PAC's bank records.

Pitts, in his capacity as a Vice President of Amedisys, was also responsible for transferring payroll deductions from Amedisys' employees to Amed PAC. Amedisys alleges that Pitts did not timely transfer these payroll deductions; instead, he allowed them to accumulate in Amedisys' payroll system, and then transferred them to Amed PAC in bulk.<sup>6</sup> Specifically, in November 2013, Pitts transferred \$85,000 in payroll deductions into Amed PAC's bank account, but he only reported \$5,360 of the \$85,000 as receipts on Amed PAC's disclosure report, a difference of \$79,640.<sup>7</sup> On November 19, 2013, Pitts wrote a check for that same amount from the PAC account – forging the signature of Amedisys' Chief Executive Officer, William Borne –

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<sup>3</sup> See <http://www.amedisys.com/our-company.aspx>.

<sup>4</sup> See Compl. at 1.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 1, 2.

<sup>7</sup> Amed PAC reported itemized contributions of \$5,120 and unitemized contributions of \$240 from Amedisys officers and employees. See Amed PAC's 2013 December Monthly Report at 4, 6.

to Evergreen, a "fictitious business entity" that Pitts created and controlled.<sup>8</sup> Pitts also failed to include the disbursement of \$79,640 on Amed PAC's 2013 December Monthly Report.<sup>9</sup> To conceal the embezzlement, Pitts did not include the PAC's November 2013 bank statement or a copy of the check in the PAC's records.<sup>10</sup>

Pitts responded that he is willing to cooperate with the Commission to resolve this matter.<sup>11</sup> Pitts asserts that he has already made some restitution to Amedisys by selling his home and liquidating financial assets, and he acknowledges that the restitution order includes paying \$79,640 to Amed PAC.<sup>12</sup>

#### **B. Legal Analysis**

The Act and Commission regulations require that all funds of a political committee must be "segregated from and may not be commingled with the personal funds of any individual."<sup>13</sup> The Act prescribes additional monetary penalties for violations that are knowing and willful.<sup>14</sup> A violation of the Act is knowing and willful if the "acts were committed with full knowledge of all the relevant facts and a recognition that the action is prohibited by law."<sup>15</sup> This does not

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<sup>8</sup> See Compl. at 1. According to Amedisys, prior to Borne's death in 2016, he confirmed to Amedisys personnel that he neither signed nor authorized the \$79,640 disbursement from Amed PAC to Evergreen Incentives. *Id.* While Amedisys and Amed PAC describe Evergreen as a fictitious business entity based on Pitts' plea agreement, the agreement itself merely states that Pitts created Evergreen, which was "also utilized to carry out his scheme to defraud." See Pitts Resp. and attached plea agreement at 8.

<sup>9</sup> Compl. at 1.

<sup>10</sup> Information available to the Commission indicates that Pitts routinely placed the bank statements and other information used to prepare FEC reports in the appropriate Amed PAC files.

<sup>11</sup> Pitts Resp. at 1; Pitts Supp. Resp. at 2.

<sup>12</sup> Pitts Resp. at 1; Pitts Supp. Resp. at 1.

<sup>13</sup> 52 U.S.C. § 30102(b)(3) and 11 C.F.R. § 102.15.

<sup>14</sup> See 52 U.S.C. §§ 30109(a)(5)(B), 30109(d).

<sup>15</sup> 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

require proving knowledge of the specific statute or regulation the respondent allegedly violated.<sup>16</sup> Rather, it is sufficient to demonstrate that a respondent "acted voluntarily and was aware that his conduct was unlawful."<sup>17</sup> This awareness may be shown through circumstantial evidence from which the respondent's unlawful intent reasonably may be inferred.<sup>18</sup>

Pitts forged the name of William Borne, Amedisys' Chief Executive Officer, on a check drawn on Amed PAC's bank account in the amount of \$79,640 and made payable to Evergreen Incentives. Evergreen Incentives had a bank account which Pitts controlled and Pitts' plea agreement states that Evergreen Incentives was one of the companies he used to carry out his fraudulent scheme. Pitts did not place a copy of Amed PAC's November 2013 bank statement nor a copy of the \$79,640 check in the PAC's records, likely to conceal his embezzlement.

The available information supports a reasonable inference that Pitts commingled PAC contributions with personal funds. In Pitts' criminal plea, he admitted to creating Evergreen to carry out his scheme, and the restitution order in the criminal matter requires Pitts to repay \$79,640 to Amed PAC, the exact amount he embezzled from the PAC account.<sup>19</sup> In addition, the

<sup>16</sup> *United States v. Danielczyk*, 917 F. Supp. 2d 573, 578 (E.D. Va. Jan. 9, 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, government needs to show only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)).

<sup>17</sup> *Id.* (citing jury instructions in *United States v. Edwards*, No. 11-61 (M.D.N.C. 2012), *United States v. Acevedo Vila*, No. 08-36 (D.P.R. 2009), *United States v. Fieger*, No. 07-20414 (E.D. Mich. 2008), and *United States v. Alford*, No. 05-69 (N.D. Fla. 2005)).

<sup>18</sup> *Cf. United States v. Hopkins*, 916 F.2d 207, 213 (5th Cir. 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir. 1989)). *Hopkins* involved a conduit contributions scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants' convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

<sup>19</sup> The Commission has found reason to believe there was commingling based on inferences like this in past matters, or based on the simple fact that a treasurer wrote checks to himself. *See Factual & Legal Analysis* at 3, MUR 6768 (Debra Doherty) (finding reason to believe that the treasurer knowingly and willfully commingled committee funds with personal funds based on evidence that she wrote herself checks so that she could afford her home mortgage and health insurance payments, and those payments were "unlikely to be paid in cash"); *Factual & Legal Analysis* at 2-3, MUR 5872 (Jane Hague for Congress) (making a knowing and willful reason to believe

information supports a knowing and willful finding. Pitts, who prepared the PAC's disclosure reports, under-reported the \$85,000 transfer of contributions, did not report the disbursement to Evergreen, and did not include relevant documents in the PAC's records, all of which indicates Pitts intended to conceal the embezzlement.<sup>20</sup>

Therefore, the Commission found that there is reason to believe that Michael David Pitts knowingly and willfully violated 52 U.S.C. § 30102(b)(3) and 11 C.F.R. § 102.15.

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finding because the Respondent wrote checks to herself from the Committee, which was enough to conclude that she "likely . . . commingled some, if not almost all, of the embezzled funds"); Factual & Legal Analysis at 3, MUR 5811 (Doggett for US Congress) (finding reason to believe that Respondent knowingly and willfully commingled based on evidence that the Respondent wrote herself checks from the Committee so that she could pay personal bills).

<sup>20</sup> See *supra* footnote 19.

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